

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Crim. No. 08-cr-107-01-PB

Marcus Cherry

O R D E R

The defendant moves to reduce his sentence based upon a pending amendment to the Federal Sentencing Guidelines regarding crack cocaine offenses (document no. 46) and requests the court appoint counsel to pursue a sentence reduction on his behalf (document no. 47). For the following reasons, both motions are denied without prejudice and will be automatically renewed if the pending guideline amendment ultimately becomes law on November 1, 2011.

On June 30, 2011, the United States Sentencing Commission determined to give retroactive effect to the permanent guideline amendment regarding crack cocaine offenses (Parts A and C of Amendment 750). This amendment implemented the emergency directives in section 8 of the Fair Sentencing Act of 2010. Absent congressional action to the contrary, retroactivity of the guideline amendment becomes effective November 1, 2011, at which time reductions in sentence pursuant to 18 U.S.C. § 3582(c)(2) based on the retroactive application of the crack cocaine amendment will be authorized. It is yet to be determined, however, whether Congress will take action on the proposed guideline amendment.

Thus, because the defendant is seeking a sentence reduction based upon a guideline amendment that may or may not take effect on November 1, 2011, and because the defendant

would not be eligible for an immediate release should the proposed amendment ultimately take effect on that date, his motion for a sentence reduction (document no. 46) as well as his motion for court appointed counsel (document no. 470 are denied without prejudice at this time. Should the guideline amendment take effect on November 1, 2011, the court will consider the merits of the defendant's motions after that date and will order the government to respond if necessary.

So ordered.

August 22, 2011

/s/ Daniel J. Lynch
Daniel J. Lynch
U.S. Magistrate Judge

cc: Marcus Cherry, pro se
Counsel of Record